

Minister of Civil Resistance

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Herbert Kickl, Federal Minister of the Interior of the Republic of Austria, gave a remarkable [interview on public television](#) this week. Kickl, who used to be the secretary general of the far-right FPÖ party, wants to restrict asylum seekers' access to justice and independent legal advice and withdraw the protection status of asylum seekers who have been convicted for crimes. That he is "standing on the ground of the rule of law" in doing so was "a matter of course", affirmed the Minister and subsequently explained this matter of course as follows: There is no greater danger for the rule of law is "that it is abused and applied against itself, that one virtually stumbles over one's own laws and is incapable of action". This, according to Kickl, was the situation that Austria faces in terms of asylum policy: "Here is the house on fire. There is the hose." But "some strange legal constructions" prevent him from picking that hose up and start extinguishing. Legal constructions, "in some cases many, many years old, originating from completely different situations". He wants to "take on" these regulations, as he believes in the "principle that the law has to follow politics and not politics the law."

Now, this was obviously intended as an invitation to get beside oneself with horror and disgust about the FPÖ's lack of respect for law and justice, in order to provide proof for the fact that their critics once again have no clue what they are talking about: "Even our youngest learn in civil education", the FPÖ-related website [unzensuriert.at](#) snottily jeered, "that politicians sit in parliament and that they make the law". The legal system "does not represent an unchangeable fact, but is based on a social consensus and is the result of an often controversial social and political negotiation process. Law on the one hand provides the binding framework within which politics operates, and on the other hand is the product of politics that can give and change law through legislation".

They surely have paid good attention in their civil education lessons, those FPÖ lads. In the modern constitutional state, law is indeed the product of politics and not only its framework of action. Slow clap for Interior Minister Kickl: That he wants to "take on" regulations that are not to his political liking is not worth mentioning. To strive to amend such regulations is what politics does.

"Things from the Fifties"

But let's hear what else the man had to say in that interview. On the question whether he expects that the EU would come after him with a treaty infringement action, the minister replied candidly: "You know, we do the same with financial matters." This alluded to the new practice in Austria since the beginning of the year, to discriminate against EU foreigners with children abroad in the payment of family subsidies, which has also [prompted an infringement action](#) by the EU Commission before the ECJ. "There will also be a conflict with EU law", said the Minister of the

Interior. "And we are of the opinion that what we are doing is correct." And if there are "difficulties, if we possibly meet some limitations here, then I want to have an honest discussion about it. Otherwise politics will stop. We cannot fiddle around with things from the fifties under completely different conditions!"

++++A Note from the University of Leipzig++++

*The Chair for European Law, Public International Law and Public Law is pleased to announce its first edition of the **International Summer School on Human Rights Protection under the ECHR** in summer 2019. This Summer School combines the academic expertise of an alma mater which is both rich in tradition while at the same time being a modern, forward-thinking institution with its unique location in a vibrant city. It welcomes students and professionals from all over the world to analyse and discuss current developments and recent judicial decisions in order to impart a profound knowledge on the protection of human rights under the application of the European Convention on Human Rights. Particular focus will be put on procedural and practice-oriented questions. The sessions will cover a wide range of topics, from Terrorism, Slavery, Children's Rights, War Crimes, Judicial Independence, the Freedom of Religion, Data Protection Rights, and "Push backs" at EU external borders and so forth. **For the whole programme and list of speakers please click [here](#).***

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That's interesting. If I interpret this correctly and don't just fall into one of those boring old ambiguity traps so commonly used by the far right in these days, then Minister Kickl is saying two things: Firstly, he consciously wants to accept, if not bring about, a breach of European human rights law (hence the allusion to the ECHR from the "Fifties"), in order to, secondly, get an "honest discussion" about the legal limitations established therein. Correctly so far, FPÖ?

If I am not mistaken, then the minister seems to be propagating some sort of civil resistance strategy against European law: Purposefully and consciously doing what is forbidden is a tried and tested means of making visible what is invisible. The transgression makes unjust rules and illegitimate power perceivable and denounceable, and what is more, it makes those who suffer from those rules visible as political subjects. Rosa Parks sitting down in that bus where the law bars her from sitting: What that law does to her every day suddenly becomes tangible and real, a scandal, a contested and politicized matter, and she herself, the invisible one, gets visible as a suffering, yet active person and a political subject.

Kickl apparently imagines something of that sort with respect to the European Convention on Human Rights: Just let everyone see what these "things from the fifties" do to us every day! Let this become tangible and real! Civil resistance! We are breaking the law, and we are doing so purposefully and with strategic intent! We want an "honest discussion"! Bring on your law suits! We are not afraid! The law has to follow politics and not vice versa, and we force this order by breaking the law, which we thereby transform into a political issue and make ourselves visible as a suffering, yet active person and a political subject!

Now let's take a moment and realize that this is the acting Minister of the Interior of the Republic speaking. The top dog of the state security apparatus turns himself into Rosa Parks, so to speak. But beyond this bitter irony, Kickl does even more: He reconstructs European law as a law that denies a suffering subject his rights. What kind of subject is this? It is all those who want to curtail the human rights of their fellow citizens with asylum status but can't because of those "things from the Fifties". It's the ordinary, normal Austrians so gladly invoked by the FPÖ. It's the so-called majority. The so-called people. Or in other words: the voters and supporters of the Freedom Party of Austria. Minister Kickl imagines that by breaking European law in the name of the Austrian state he can symbolically bring about the identification of the state with its FPÖ clientele. This what he seems to have in mind, the acting Minister of the Interior Herbert Kickl of the FPÖ.

This seems to me to be the source of the distinctly sulphurous reek that this interview exudes: Kickl has indeed shown his hand, and it reveals his intent to break not only with the ECHR, but also with the foundations of the democratic constitutional and legal state. The thought that this man is in command of the police and the protection of the constitution in Austria can rob you of a good night's sleep. The only consolation is that, in times like these, few people sleep well anyway, I guess.

The present and the future

The certainly most breathtaking event of the week was Juan Guaidó being sworn in as interim president to lead **Venezuela** out of the authoritarian Chavez/Maduro dictatorship. It is not yet clear whether this future will become present so quickly, but at least the world realizes that something really big is happening, also in terms of constitutional law. [MARYHEN JIMÉNEZ MORALES](#) explains the recent events, and further articles on the subject will hopefully follow next week.

In **Ethiopia**, inspiration is not merely a matter of the future after the enormous steps the country already has taken since April 2018 towards a democratic constitutional state. But the future is overshadowed by the unresolved question of how the country's ethnic diversity is reflected in the constitution. [YONATAN FESSAH](#) discusses whether the ethnic federalism of Ethiopia is sustainable and if there are alternatives.

The **EU** Commission has published a critical report on the controversial "golden passport" trade by which some member states sell access to EU citizenship for cash. [DIMITRY KOCHENOV](#), whose antipathy towards thick concepts of citizenship is well known, makes little effort to disguise his anger about the shortcomings of the EU Commission's legal argumentation.

In **Germany**, the asylum legislator has decided to extend the list of so-called safe countries of origin, which leads [JAKOB HOHNERLEIN](#) to ask to what extent it can depend on the political will of the majority in Germany whether Georgia, Tunisia, Algeria and Morocco are safe from persecution or not.

Public broadcasting in **Germany** has been a rich source of constitutional problems for decades, and the article by [HAUKE MÖLLER](#) illuminates that this source keeps spouting, on the occasion of a recent amendment of the regulation of online publishing of text content.

Our online symposium on the pros and cons of disentangling Union citizenship from nationality ("Eurozenship"), organised jointly with Liav Orgad and the WZB, continues with contributions by [RAINER BAUBÖCK](#), [EVA ERSBØLL](#), [JULES LEPOUTRE](#), [JEAN-THOMAS ARRIGHI](#), [JELENA DZANKIC](#) and the aforementioned DIMITRY KOCHENOV.

Elsewhere

[MANUEL MÜLLER](#) considers the initiative of **EU** Commissioner Pierre Moscovici to abolish national veto rights in EU tax policy to be a gain for democracy.

[THOMAS KIENLE](#) explains the constitutional basis of the current dispute over the Digital Pact for Schools in **Germany**.

[LAURENS LAVRYSEN](#) regrets that the European Court of Human Rights in a **Russian** case failed to safeguard the rights of accused persons to summon witnesses for the defence.

[GAUTAM BHATIA](#) reports on the efforts of the **Indian** Supreme Court to get a grasp of the notoriously elusive term "obscene" in connection with the ban on bar dancing in Maharashtra.

[MARIO GOMEZ](#) gives an overview of the constitutional crisis in **Sri Lanka**.

[ANNETTE DE MOURA](#) analyses the constitutional plans of the right-wing extremist President of **Brazil** (French).

[ROSELINE LETTERON](#) criticises the decision of the **French** Constitutional Council to dismiss a lawsuit against the jurisdiction of special military tribunals for complaints against the *gendarmerie* (French).

[MARK ELLIOTT](#) clarifies that the **British** government cannot prevent a possible parliamentary law against a no-deal Brexit by "advising" the Queen to withhold her consent. [ROBERT CRAIG](#) weighs all arguments for and against and articulates surprise at "living at a time when the Government could conceivably advise the Queen to exercise a prerogative that has not been used for 300 years".

[VIKRAM DAVID AMAR](#) criticizes a ruling from an **Alabama** judge who considers confederate monuments as an exercise of freedom of speech by the municipality.

[ALBERT FOX CAHN](#) warns that **New York** police are operating 14 drones with infrared technology "that have the ability to see through walls and record the privacy of bedrooms".

So much for this week. All the best!

Max Steinbeis

